Supreme Court, U. S.
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NO. 75-511

In the
Supreme Court of the United States

OCTOBER TERM, 1974

H. B. BUSTER HUGHES, INC.,
Petitioner

versus

OCEAN DRILLING AND EXPLORATION COMPANY,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF ON BEHALF OF OCEAN DRILLING AND EXPLORATION COMPANY

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TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

OPINION BELOW

The entire oral opinion of the District Court is reproduced at Appendix A, Page 8 .

ARGUMENT

The first question presented by H. B. Buster Hughes, (Hughes) is whether or not the master service contract

(Appendix B) Page 18 .) is a Louisiana contract or a maritime contract,and this quietly concedes that if the contract is a Louisiana contract, the judgment below is correct. *Dickerson v. Continental Oil Co.*, 449, F. 2d 1209 (5th Cir. 1971); *Day v. ODECO*, 353 F.Supp. 1350 (ED.La. - 1973). The Trial Court found as a matter of fact that the contract in question was a Louisiana contract and this judgment was approved by the Fifth Circuit Court of Appeals. Necessarily this Court would have to reverse this finding of fact in order to grant the writ.

The parties involved in this litigation are Ocean Drilling and Exploration Company (ODECO), a company engaged in the business of drilling for oil on land, and over water on stationary platforms as well as submersible type drilling rigs. Hughes is in the business of supplying labor to fit the needs of its customers, such as ODECO, and in this particular case supplied three such workers: a welder, a welder's helper, and a cook. Hughes is a Louisiana Corporation, ODECO's principle place of business is Louisiana. This contract was executed in New Orleans, Louisiana. The contract provides that all work done by Hughes for ODECO under work orders, written or oral, whether done on permanent platforms, vessels, or within the State of Louisiana, was to be covered by the contract. Such a contract is not maritime in nature, as its purpose is not maritime. Hughes would ask the Court to find it to be a maritime contract because under the particular circumstances of this case, a vessel was involved, though this was a highly contested issue in both the trial court and the appellate court. To make such a finding under the limited facts of this case would lead to absurd and inconsistent results. If this accident had occurred on a stationary plat-

form in the Gulf of Mexico, Louisiana law would apply under *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352, 89 S.Ct. 1835, 23 L.Ed. 2d 380 (1969). Also see *Day v. ODECO*, 353 F. Supp. 1350 (ED La. - 1973). This was an obvious consideration of the lower courts in determining this to be a Louisiana contract.

Assuming arguendo that the contract is maritime in nature, the ruling in *Bisso v. Inland Waterways Corp.*, 349 S. 85, 75 S.Ct. 629, 99 L.Ed. 911, is inapplicable for several reasons. First, the peculiar circumstances of *Bisso* involved a towing contract and not a service for work to be performed for a drilling company in connection with the overall purpose of exploring for oil. There are any number of cases specifically holding that indemnity agreements such as the master service contract are not against public policy under maritime or Louisiana law. *Jurisich v. United Gas Pipeline Co.*, 349 F. Supp. 1227 (E.D. - La. 1972); *Mills v. Fidelity & Casualty Co. of New York*, 226 F.Supp. 786 (W.D. La. 1964); aff. 338 F.2d 341 (5 Cir. 1964); *Grigsby v. Coastal Marine Service of Texas, Inc.*, 412 F.2d 1011, (5th Cir. 1960); also see *United States v. Seckinger*, 408 F.2d 146 (5 Cir. 1969) reversed on other grounds; *Dickerson v. Continental Oil Co.*, 449 F.2d 1209 (5 Cir. 1971); *Transcontinental Gas Line L. Corp. v. Mobile Drill. Barge*, 424 F. 2d 684 (5 Cir. 1970); *Lanasse v. Travelers Ins. Co.*, 450 F. 2d 580 (5 Cir. 1971); *Elephant, Inc. v. Hartford Accident and Indemnity Co.*, 239 S.2d 692 (CA1 La. - 1970).

Furthermore, *Bisso* by its facts is limited to towing contracts and then, only where the relative positions of the parties make fair bargaining impossible. The trial court and

the court of appeal both held as a matter of fact that in the instant case there was no reason to invalidate the contract because of the relative size of the companies or their positions in the market. But whether the contract was non-maritime in nature is of no moment to the decision correctly established below. In *Grigsby v. Coastal Marine Services of Texas, Inc.*, 412 F.2d 1011, (5th Cir. 1960), involving an accident aboard a submersible drilling rig, Judge Brown pointed out that even if the contract were maritime in nature the principles of Louisiana law should apply:

> Probably at this point the admiralty Judge must forsake his amphibious woolsack, *Guillot v. Cenac Towing Co.*, 5th Cir.,1966, 366 F.2d,898 1966 A.M.C. 2685; *Compania Anonima Venezolana Di Navegacion v. A. J. Perez Export Co.*, 5th Cir., 1962, 303 F.2d 692, 1962 A.M.C. 1710 art. denied 371 U.S. 942, 835 Ct. 321, 9 L.Ed. 2d 276, and return to that less expansive function of Erie - seeking Louisiana law. The contract is not maritime and if it were, this aspect seems more like insurance and now much more latitude is left to the states even as to maritime insurance. *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 1955, 348 U.S. 310, 75 S.Ct. 368, 99 L.Ed. 337. Thus this Louisiana trained Judge was faced with the problem of Louisiana policy considerations on indemnity contracts indemnifying one against his own negligence. *Grigsby, supra*, p. 1038.

2.

Hughes has attempted to make the relative size of the parties an issue during the entire course of this litigation when in fact it is not. This was an insured risk insofar as Hughes was concerned. A premium was paid for the insurance policy required by the contract and the cost of same was charged back to ODECO as part of Hughes' operating overhead. See Appendix A, page 8 . Therefore any loss sustained was not the loss of Hughes, but of the underwriters.

In any event, the trial court found as a matter of fact that the relative size of the companies was not such as could invalidate the contract:

> "There has been suggestion in connection with the memorandum for summary judgment several weeks ago that the overwhelming economic power of ODECO was such that the Court should consider the clause invalid. I do not consider this to be the case. I consider particularly the fact that it was an insured risk; that it could be taken into account in fixing the rates. There was no requirement that Buster Hughes carry out any particular work, if it didn't wish to under the contract. Buster Hughes was an experienced company of substantial size, itself. So I find as a matter of fact that there was no policy reason to hold the contract invalid, because of the relative size of the companies or position in the market."

This was specifically approved by the Court of Appeals:

> "The district court stated, 'Buster Hughes was an experienced company of substantial size, itself. So I find as a matter of fact that there was no policy reason to hold the contract invalid because of the relative size of the companies or position in the market.' We accept this determination of the trial court."

CONCLUSION

There are no new issues before this Honorable Court. Every issue presented herein, as well as numerous others, was carefully reviewed by the district court and approved by the Court of Appeals.

We respectfully submit that the factual findings of the lower court should not be disturbed and that the Writ of Certiorari filed herein by Hughes should be denied.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petition for Writ of Certiorari have been served on Arthur F. Dumaine, 344 Camp Street, New Orleans, La., John M. Lawrence, 2757 Tulane Ave., New Orleans, La., Salvadore E. Gutierrez, Jr., Suite 802, 344 Camp Street, A. Remy Fransen, Jr., 814 Carondelet Street, New Orleans, La., Kenneth L. Sanders, 3324 N. Causeway Blvd., Metairie, La., Chester Francipane, 3324 N. Causeway Blvd., Metairie, La., and Wayne H. Scheuermann, 3324 N. Causeway Blvd., Metairie, La., this 28 day of November, 1975.

JAMES F. HOLMES

APPENDIX A

Well, gentlemen, it's my custom and I made a deal with you that if you prepared the case adequately prior to trial I wouldn't make you wait for a decision.

In rendering an oral decision, one must always take into account the situation. Certain cases, which are novel, which lack precedent dictate issuance of a written decision. Other cases, which do not contain those factors and relate to well settled or reasonably well settle principles, which are primarily factual in nature, I feel best disposed of as expeditiously as possible while the facts and law are fresh on the Judge's mind. I feel that this case falls into that category, because of the fact that the parties previously have furnished me with proposed Findings and Conclusions and it makes it possible for me to determine the extent, to which they have either proved their case or disproved the proponent's case. I feel I am prepared to rule.

The crux of the issue between Ocean Drilling and Exploration Company, the third-party plaintiff and cross-claimant in these cases and H. B. "Buster" Hughes, Incorporated, it seems to me is whether the master service agreement entered into between those companies, dated October 8, 1970 was applicable to the particular activity, in which the employees of Buster Hughes, the plaintiffs in this action, were engaged when the injury took place, as a result of the unexpected accident on the round barge. Further, if it is applicable, the question is whether its provisions regarding indemnity are enforcable in view of all the facts and circumstances

and whether they apply to the judgment, which has been rendered against ODECO by virtue of previous action of the jury in these consolidated cases. I find that the contract entitled "Master Service Contract," dated October 8, 1970, was in effect, did govern the relationship between ODECO and Buster Hughes at the time of the accident and that Paragraph 9 of that contract entitles ODECO to indemnity from Buster Hughes for the amount of the judgment against him.

With regard to the first issue, that is, the applicability of the master service agreement, let me say without intending impertinence to any counsel involved, that it would take a person who is a great deal more addicted to sophistry than I to accept the proposition that this contract was in - applicable to the business activities then going on between ODECO and Buster Hughes. Indeed, both H. B. Buster Hughes and H. D. Hughes and all other witnesses appeared to have recognized, themselves, that the contract was applicable, but seemed to wish to ask the Court to draw some distinction between a situation, in which the relationship between Buster Hughes and ODECO was that of master-servant or that of independent contractor or some other situation, in which the independent contractor relationship had been vitiated. The contention by Buster Hughes contending that the contract only applies in a situation where Buster Hughes, in fact was acting as an independent contractor, I think this is a completely erroneous interpretation of the contract. The Court feels that the contract is perfectly clear and that as between Buster Hughes and ODECO, the intention was to provide that Buster Hughes would be an independent contractor at all times. This was provided in Paragraph 13. Now, no two parties can make their will in this regard binding on third

persons. Indeed, as we know, the law sets forth many tests in determining whether a relationship is actually that of Independent contractor or something else. These tests have to do with supervision and control, who provides tools, who provides payment, many, many other tests, none of which are decisive. The control test, as pointed out by counsel, isn't a very significant test, but these tests all relate to third parties. In other words, ODECO and Buster Hughes come under no circumstances by virtue of the agreement, regardless of what the terms of that agreement have made their will, with regard to a relationship binding on third-parties. If, indeed, the facts proved to the contrary, but as between themselves, they have agreed that their relationship would be that of contractor and independent contractor and it provided that Buster Hughes would be an independent contractor. This was the purpose of Paragraph 13.

Now, Buster Hughes has asked the Court to read Paragraph 13 as providing the scope of the contract by in effect, asking the Court to use Paragraph 13 as limiting the scope of the contract only to those situations, which Buster Hughes was actually an independent contractor vis-a-vis third parties. Well, I think this is a grossly erroneous interpretation of the contract. The scope of the contract is set forth in Paragraph 1(a) in clear terms, as governing and controlling all work of sub-contractor. That was the denomination of Buster Hughes for the drilling contractor under work order, oral or written, given on or after the date by the drilling contractor to subcontractor. That's the scope of the contract. The fact that the parties subsequently deemed it advisable to agree amongst themselves that at all times Buster Hughes would be an independent contractor, in my opinion does not in any

way limit the scope of the work to those situations, in which that was the actual relationship. Thus, in this case I find it unnecessary to determine whether Buster Hughes' activities on the date of the occurrence were those of an independent contractor or not, insofar as relationship to the plaintiffs, its employees, because I think the very purpose of Paragraph 13 was to preclude the necessity of such determinations between Buster Hughes and ODECO; to eliminate the uncertainty that would exist in every case as to the contractual relationship between ODECO and Buster Hughes. Indeed, to give this contract any other interpretation would be a tremendous eye test. This would, in effect, be no contract relating to any of the business relationships between ODECO and Buster Hughes, until after there were a determination based upon many factual considerations of whether or not Buster Hughes was indeed an independent contractor or whether or not some other facts had occurred, which would have vitiated the independent contractor relationship.

Now, obviously, the parties could not have intelligently have made such a decision, so I find it immaterial to determine what the actual relationship was between ODECO and Buster Hughes on the date of the occurrence.

The Jury in this case against ODECO by the plaintiffs found that the plaintiffs were borrowed servants of ODECO. In making its decision that they were seamen for purposes of the Jones Act, the Court gave the jury interrogatories, I believe thirteen, to ascertain whether the Jones Act was applicable and whether plaintiffs were entitled to recover under other theories of recovery. I find it significant to note that the jury answered yes to every interrogatory, except the

one, which specifically they were told not to answer yes to, if they had answered another interrogatory yes. Thus, I conclude that the jury was primarily interested in seeing that the plaintiffs recover, without regard to the theory on which they recover. However, based on the Court's instructions as to the law of borrowed servant and based on the Court's understanding of the law of borrowed servant relationship, if I had been required and if I were required for purposes of this decision to make a determination as to the borrowed servant status of the employees, I would have decided in a fashion differently than the jury decided. I felt the evidence did show that there was indeed a rather close relationship between Buster Hughes' employees and ODECO representatives; that this was due primarily to friendship, long-time working relationships, but that at all times, the real control, the ability to hire and fire from employment by Buster Hughes, rested with Buster Hughes and that if Buster Hughes had wished to, under the terms of its contract, have exerted complete control, it could have insisted that the type of cooperation, which took place not take place. Obviously, it didn't do so, because it wouldn't have been common sense to do so in any relationship of the nature existing in the offshore. There must of necessity be cooperation. But Buster Hughes at all times had a superintendent or pusher on board the round barge. He was there in charge of the Buster Hughes m n and the Court feels that under the tests applicable, the men would not have been borrowed servants. I reiterate that I state this only for the purposes of making complete findings. I do not find that it's necessary to reach this decision, because I find nothing in the contractual agreement between ODECO and Buster Hughes, which would have vitiated Hughes' obligation to indemnify ODECO. Even if

the employees had become borrowed servants, one must bear in mind the distinction between the rights of third parties in this case, the plaintiffs and the contractual relationship between these two parties involved in this matter, which I'm deciding, these two parties decided by Paragraph 13 of their agreement to eliminate uncertainty and to provide what their relationship would be and by Paragraph 9, they decided to shift the responsibility for all liability pertaining to employees of Buster Hughes to Buster Hughes. Moreover, by Paragraph 17 they agreed Buster Hughes would provide insurance to insure its contractual undertaking and the Court finds it significant to note that following it or extemporaneously with the agreement, the insurance agent Buster Hughes employed provided a very detailed statement to ODECO, in which after stating the limits of comprehensive liability, it went on to specifically state that it did cover contractual liability and further, that it covered a hold harmless agreement, if there were such a hold harmless agreement. So we have a situation here where it appears to the Court that Buster Hughes and its insurer held out to ODECO that they would insure and that they had insured the specific contractual undertaking. I find nothing in the law, which abrogates the right of Buster Hughes to assume this responsibility and to shift it from ODECO to itself as a matter of business risk and for Buster Hughes or for its insurer to have read this contract in such a limited fashion to have intended in any fashion that the indemnity agreement would only apply if a finder of fact in a particular case found that an independent contractor relationship existed, is in this Court's opinion a defiance of all common sense and imagination. I just cannot believe that sound experienced businessmen and insurers would have undertaken such a risk on such a stretched interpretation of words.

Now, with regard to the application of the contract, the specific work, I have found, as I stated that the contract by its own terms specifically covered the work. I find this not only from the contract, but I find it, also from the testimony of both Mr. Hughes and Mr. Rodrigue and Mr. Dagley. Indeed, if this contract, as I say had not been the contract governing the relationship, there would have been no contract. Moreover, the evidence consisting of exhibits pertaining to work orders issued pursuant to the contract payments made thereunder further corroborate that it was intended by the parties that the work actually done at the time of the accident was within the scope of the master-servant contract.

Now,with regard to this question, the Court stated earlier that it did not feel that a written opinion was necessary, because it was not novel. I'm basing this statement primarily on the fact that the Fifth Circuit has recently decided the case of *Tidewater Oil Company versus Travelers Insurance Company*, in which Buster Hughes was the insured of Travelers, which appears to me to be almost on all fours with this and which the Fifth Circuit speaking through Judge Godbold reversed and sent the case back, because the District Court had attempted to discern some intention of the parties regarding the application of the contract, rather than reading the contract itself. The question in that case had to do with indemnity provisions of the contract and I find that the Fifth Circuit specifically took into account the very factors that I have just mentioned when it stated on Page 988 of 468 F.2d: "Tidewater, as a user of contract labor, requires workmen of various trades and varying skills to work under

widely differing levels of supervision and in numerous different physical situations. Traditional tests of employer-employee, independent contractor, and borrowed servant, if applied on a man-by-man, job-to-job basis, can produce wide variations and uncertainties regarding status. Neither law nor policy forbids the regular user of contract-labor from requiring that, in the interest of certainty and uniformity, vicarious liability be on the supplier and the supplier fix his contract hiring rate accordingly and insure against it if he desires. Conversely, the parties may agree for vicarious liability to fall on the user. Insofar as the furnished workmen is under traditional tests a borrowed servant, the allocation of ultimate responsibility can be in terms of indemnity or of the employee being treated as the servant of one party or the other." Obviously, the Fifth Circuit recognized the wish to eliminate the uncertainty that I have been referring to and as I say, I think the parties in this case did eliminate the uncertainty by Paragraph 9 of the agreement and Paragraph 13.

Now, with regard to the validity of the indemnity agreement, it has been contended by Buster Hughes for various reasons the indemnity agreement would be invalid. There has been suggestion in connection with the memorandum for summary judgment several weeks ago that the overwhelming economic power of ODECO was such that the Court should consider the clause invalid. I do not consider this to be the case. I consider particularly the fact that it was an insured risk; that it could be taken into account in fixing the rates. There was no requirement that Buster Hughes carry out any particular work, if it didn't wish to under the contract. Buster Hughes was an experienced company of substantial size,

itself. So I find as a matter of fact that there was no policy reason to hold the contract invalid, because of the relative sizes of the companies or position in the market. With regard to the validity of Louisiana law of such an agreement, I feel that this is completely and adequately covered by a recent decision in Civil Action 72-745, Section "C" of this Court entitled *Calvin Day versus Ocean Drilling and Exploration Company,* in which Judge Alvin Rubin thoroughly considered Louisiana law and concluded that there was nothing in the law to presumably involve an almost identical, if not identical contract to prevent the parties from fixing economic risks and hazardous enterprises as they have done in this contract, so without repeating Judge Rubin's ruling, I adopt it as my own. I independently reached the conclusion that it is a sound statement of the law of Louisiana and that it is applicable in this case. Thus, I find the indemnity agreements contained to be valid, the contract to be applicable to the work, and therefore, I order that judgment be entered in Civil Action No. 71-1928 in favor of Ocean Drilling and Exploration Company as third-party plaintiff against H. B. "Buster" Hughes, Incorporated as third-party defendant for the amount of judgment as awarded by the jury; that in case 71-2806 entitled Hester Goforth versus Ocean Drilling and Exploration Company and H.B. Buster Hughes, Inc., I find in favor of Ocean Drilling and Exploration Company as cross-complainant against H.B. "Buster" Hughes, Incorporated and order that judgment be entered for the amount the jury awarded to Hester Goforth and in Civil Action No. 71-2857 entitled Charles Norman Glover versus Ocean Drilling and Exploration Company and H.B. "Buster" Hughes, Incorporated, I find in favor of Ocean Drilling and Exploration Company as cross-claimant against H.B. "Buster" Hughes, Incorporated,

and order that judgment be entered for the amount the jury as awarded to the plaintiff.

I deny any award in any other case for attorneys fees and order the judgment be entered accordingly.

APPENDIX B

ODECO
Ocean Drilling & Exploration Company

MASTER SERVICE CONTRACT

THIS AGREEMENT made and entered into this 8 day of October, A.D. 1970, by and between OCEAN DILLING & EXPLORATION COMPANY, P.O. Box 61780, New Orleans Louisiana 70160, hereinafter called "Drilling Contractor", and H. B. "Buster" Hughes, Inc., P.O. Box 55, Harvey, Louisiana, hereinafter called "Subcontractor",

WITNESSETH THAT

WHEREAS, Drilling Contractor is engaged in the business of drilling exploratory and development wells seeking oil and gas or other minerals for itself or for the account of others; and,

WHEREAS, Drilling Contractor or other parties for whom or with whom Drilling Contractor is working may desire the services of Subcontractor; and

WHEREAS, Subcontractor represents that it has adequate equipment in good working order and fully trained personnel capable of efficiently operating such equipment and performing services in a safe, proper and workmanlike manner for Drilling Contractor or others as aforesaid;

NOW THEREFORE

In consideration of the mutual promises and covenants herein contained, the parties hereto mutually agree as follows:

1(a) This agreement shall control and govern the performance of all work by Subcontractor for Drilling Contractor under work orders, oral or written, given on or after the date hereof by Drilling Contractor to Subcontractor.

(b) With respect to any work performed by Subcontractor pursuant to contracts or work orders with parties other than Drilling Contractor on any drilling barges, vessels, platforms, installations or other property of any kind owned by, leased to, chartered to, or under the control of Drilling Contractor, Sections 8, 9, 10 and 11 of this contract shall be applicable as between Subcontractor and Drilling Contractor with respect to the work so performed.

(c) This agreement shall remain in effect until canceled by either party by giving the other party 30 days written notice to that effect at the respective addresses herein set forth; provided,however, that with respect to any work in progress as of the date of the cancellation, this agreement shall continue in effect until the work be completed.

(2) Upon the acceptance by Subcontractor of any work order for services and/or equipment, Subcontractor will furnish same at the time agreed upon, and continue operations diligently and without delay, in a safe, proper and workmanlike manner, in strict conformity with the specifications and requirements contained herein and in such work order, subject however, to paragraphs 3, 4 and 5 hereof.

(3) This Contract does not obligate Drilling Contractor to order work and/or equipment or materials from Subcontractor, nor does it obligate Subcontractor to accept such

orders, but it, together with any applicable work order, shall control and govern all work accepted by Subcontractor and shall define the rights and obligations of Drilling Contractor and Subcontractor, during the term hereof.

(4) Drilling Contractor and Subcontractor respectively agree to comply with all laws, rules and regulations, Federal, State and municipal, which are now or may become applicable to operations covered by this Agreement and any work order issued in connection herewith. If any of the terms hereof are in conflict with any applicable rule, regulation, order or law of a State or Federal Regulatory Body, the terms of this Contract so in conflict shall not apply and the applicable State or Federal rule, regulation, order or law shall prevail.

(5) Neither Drilling Contractor nor Subcontractor shall be liable to the other for any delays or damages or any failure to act due, occasioned, or caused by reason of Federal or State laws or the rules, regulations or orders of any public body or official purporting to exercise authority or control respecting the operations covered hereby, including the use of tools and equipment, or due,occasioned, or caused by strikes, action of the elements, or causes beyond the control of the parties affected hereby, and delays due to the above causes, or any of them, shall not be deemed to be a breach of or failure to perform under this Agreement.

(6) The Drilling Contractor shall pay Subcontractor for the work and/or equipment or materials furnished by Subcontractor at the rate stipulated in the work orders provided for herein, subject to same being accepted by Drilling Con-

tractor as fully complying with all the terms, conditions, specifications and requirements of this Contract and such work orders; provided, Subcontractor shall have satisfied Drilling Contractor that there are no liens or claims on or against Drilling Contractor or its property by reason of the operations of Subcontractor hereunder.

(7) Delivery tickets covering any materials or supplies furnished by vendors for which Drilling Contractor is obligated to reimburse Subcontractor, shall be turned in to Drilling Contractor as received. The quantity,description, and condition of materials and supplies so furnished shall be verified and checked by Subcontractor, and such delivery tickets shall be properly certified as to receipt by Subcontractor's representative.

(8) At any and all times during the term of this Agreement, Subcontractor agrees to carry insurance of the types and in the minimum amounts as follows:

(a) Workmen's compensation insurance in full compliance with all applicable State and Federal laws and regulations.

(b) Employers' liability insurance in the minimum limits of $100,000.00 per accident covering injury or death to any employee which may be outside the scope of the workmen's compensation statute of the state in which the work is performed.

(c) Comprehensive general liability insurance with minimum limits of $100,000.00 for injury to or death of any one person and $500,000.00 for any one accident and with minimum limits of $300,000.00 for property damage. Such insurance shall additionally cover the contractual liabilities and

indemnities herein assumed by Subcontractor with minimum limits of $500,000.00

(d) Automobile liability insurance covering owned, non-owned, and hired automotive equipment with minimum limits of $100,000.00 for injury to or death of any one person and $300,000.00 for any one accident and $100,000.00 property damage.

(Add Marine Insurance clause if required.)

(e)

(f) All such policies shall be carried in a company or companies acceptable to Drilling Contractor and shall be maintained in full force and effect during the term of this agreement and shall not be canceled, altered or amended without 10 days prior written notice having been furnished to Drilling Contractor. All policies of Subcontractor, whether specifically mentioned above or not, shall be endorsed to waive Subrogation against Drilling Contractor and against all parties for whom Drilling Contractor may be working, with the exception of Workman's Compensation insurance but including all insurance carried by Subcontractor protecting against loss of or damages to its property and equipment employed in the performance of any work order issued hereunder. Subcontractor agrees to furnish Drilling Contractor with a certificate or certificates evidencing insurance coverage in accordance with the above requirements and upon request to furnish Drilling Contractor certified copies of all such policies.

(9) Subcontractor agrees to indemnify and hold harmless Drilling Contractor from and against any and all liens and claims for labor or material, and against any and all claims, demands, or suits for damages to persons and/or property

(including, but not limited to claims, demands, or suits for bodily injury, illness,disease,death, loss of services,maintenance, cure, property or wages), which may be brought against Drilling Contractor (including, but not limited to those brought by Subcontractor's employees and agents and the agents and employees of its subcontractors) incident to, arising out of, in connection with, or resulting from the activities of Subcontractor, its employees and agents, or its subcontractors and their employees and agents, or in connection with the work to be performed, services to be rendered, or material to be furnished, under this contract, or under contracts referred to in 1(b) above, whether occasioned, brought about or caused in whole or in part by the negligence of Drilling Contractor, its agents, directors, officers, employees, servants or subcontractors, or otherwise, or by the unseaworthiness of any vessel owned, operated or controlled by Drilling Contractor, regardless of whether such negligence or unseaworthiness be active or passive, primary or secondary.

(10) Drilling Contractor shall not be liable for damage to or destruction of Subcontractor's surface equipment or materials even though such damage may be caused in whole or in part by the negligence of Drilling Contractor, its agents, directors, officers, employees, servants, subcontractors or otherwise or by the unseaworthiness of any vessel owned, operated or controlled by Drilling Contractor.

(11) Subcontractor shall report to Drilling Contractor as soon as practicable all accidents or occurrences resulting in injuries to Subcontractor's employees or third parties, or damage to property of third parties, arising out of or during the course of services for the Drilling Contractor or under

contracts referred to in paragraph 1(b) above by Subcontractor or of any sub-contractor of Subcontractor, and, when requested, shall furnish Drilling Contractor with a copy of reports made by Subcontractor to Subcontractor's insuror or to others of such accidents and occurrences, including statements or any other investigative material.

(12) Subcontractor agrees to pay all taxes, licenses, and fees levied or assessed on Subcontractor in connection with or incident to the performance of this Contract by any governmental agency and unemployment compensation insurance, old age benefits, social security, or any other taxes upon the wages of Subcontractor, its agents, employees and representatives. Subcontractor agrees to require the same agreements and to be liable for any breach of such agreements by any of its sub-contractors. Subcontractor agrees to reimburse Drilling Contractor on demand for all such taxes or governmental charges, State or Federal, which Drilling Contractor may be required or deem it necessary to pay on account of employees of Subcontractor or its sub-subcontractors. Subcontractor agrees to furnish Drilling Contractor with the information required to enable it to make the necessary reports and to pay such taxes or charges. At its election, Drilling Contractor is authorized to deduct all sums so paid for such taxes and governmental charges from such amounts as may be or become due to Subcontractor hereunder.

(13) Subcontractor shall be an independent contractor with respect to the performance of all work hereunder, and neither Subcontractor nor anyone employed by Subcontractor shall be deemed for any purpose to be the employee,

agent, servant, or representative of Drilling Contractor in the performance of any work or service or part thereof in any manner dealt with hereunder. Drilling Contractor shall have no direction or control of the Subcontractor or its employees and agents except in the results to be obtained. The work contemplated herein shall meet the approval of Drilling Contractor and be subject to the general right of inspection for Drilling Contractor to secure the satisfactory completion thereof. The actual performance and superintendence of all work hereunder shall be by Subcontractor, but Drilling Contractor or its representatives shall have unlimited access to the operations to determine whether work is being performed by Subcontractor in accordance with all the provisions of this Contract and the work order.

(14) In addition to all other indemnifying provisions contained herein, Subcontractor represents and warrants that the use or construction of any and all tools and equipment furnished by Subcontractor and used in the work provided for herein does not infringe on any license or patent which has been issued or applied for, and Subcontractor agrees to indemnify and hold Drilling Contractor harmless from any and all claims, demands, and causes of action of every kind and character in favor of or made by patentee, licensee, or claimant of any right or priority to such tool or equipment, or the use or construction thereof, which may result from or arise out os furnishing or use of any such tool or equipment by Subcontractor in connection with the work under this Agreement and applicable work orders.

(15) In the event there is a conflict between the provisions hereof and any papers or documents, which may have been

executed or passed between the parties hereto in connection with the subject matter hereof, it is understood and agreed that the provisions hereof shall be controlling. It is expresly understood and agreed by the parties hereto that no provision of any delivery ticket, invoice or other instrument used by Subcontractor in setting forth the operations conducted hereunder shall supersede the provisions of this Agreement.

(16) Time is expressly declared to be the essence of this Contract. If either party hereto defaults in the performance of this Contract, or of work commenced under work orders as provided for herein, the other party has the option to terminate this Contract and the work order involved.

(17) No waiver by Drilling Contractor of any of the terms, provisions, or conditions hereof shall be effective unless said waiver shall be in writing and signed by an authorized representative of Drilling Contractor.

(18) All notices to be given with respect to this Contract and applicable work orders unless provided for shall be given to the Drilling Contractor and to the Subcontractor respectively at the addresses hereinabove shown. All sums payable hereunder to Subcontractor shall be payable at Drilling Contractor's address hereinabove shown unless otherwise specified herein or in the applicable work order.

(19) As a part of the consideration for this Agreement, Subcontractor hereby agrees that the provisions of paragraphs 8 (Waiver of Subrogation), 9 (Indemnity), 10 (Loss of Subcontractor's Equipment) and 14 (Patent Infringement) shall extend to and be enforceable by and for the benefit of any Owner or Operator for whom Drilling Contractor is per-

forming operations or services.

(20) The provisions hereof shall extend to and apply to situations where Ocean Drilling & Exploration Company is engaged in operations as a drilling contractor, as an operator, and as an owner or co-owner of oil and gas properties upon which the work contemplated hereunder is being performed.

(21) Except to the extent that this agreement may be exempt therefrom, Subcontractor agrees to comply with the provisions of 41 CFR Part GO-1 and Executive Order No. 11246.

During the performance of this contract, the sub-contractor (hereafter in this paragraph 21 referred to as "contractor") agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considera-

tion for employment without regard to race, creed, color, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965,and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as other-

wise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24,1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

IN WITNESS WHEREOF, the parties hereto have executed this Contract upon the date above shown in several counterparts, each of which shall be considered as an original.

WITNESSES:
S/ D. R. Rando
S/ William P. Himel
S/ D. R. Rando

OCEAN DRILLING & EXPLORATION COMPANY
S/ Alde J. French
Drilling Contractor

H. B. "Buster" Hughes, Inc.
By: S/ Bobby Dagley - Vice Pres.
Subcontractor

ISSUED TO

OCEAN DRILLING & EXPLORATION COMPANY

This is to certify that the Employers Insurance of Wausau

(Insurance Company) of Wausau, Wisconsin

(Home Office Address)

has issued the following insurance policies and that such policies are in full force and effect. Said insurance company agrees that in the event of any change being made in the policies which affects the interest of Ocean Drilling & Exploration Company or in the event said policies are cancelled, written notice will be given to Ocean Drilling & Exploration Company, P. O. Box 61780, New Orleans, La. 70160, thirty (30) days prior to the effective date thereof.

Name of Insured H. B. Buster Hughes, Inc.

Address P. O. Box 55, Harvey, Louisiana

Description of Work Oil Field Contractor

INSURANCE POLICIES IN FORCE

TYPE OF INSURANCE	LIMITS OF LIABILITY	POLICY NUMBER	EXPIRATION DATE
A. Workmen's Compensation	Statutory		
And Employers' Liability (Coverage B)	$ 500,000 each employee $ 500,000 each accident	1611-02-037529	11-1-71
B. Comprehensive General Public Liability Bodily Injury	$ 300,000 each person $ 300,000 each accident	1621-03-037529	11-1-71
Property Damage	$ 100,000 each accident $ 300,000 aggregate		
C. Automobile Liability Bodily Injury	$ 300,000 each person $ 500,000 each accident	1621-04-037529	11-1-71
Property Damage	$ 100,000 each accident		
D. Vessels Protection & Indemnity	$ _____ each accident $ _____ Max. deductible		
Hull	To value of vessel $ _____ Max. deductible		
E. Excess Liability Details:	$ _____ each accident		

Please answer the following questions regarding the policies listed above:

A. Workmen's Compensation and Employers' Liability:

1. Does this policy contain
   (a) U.S. Longshoremen's & Harbor Workers' Compensation Endorsement? (x) Yes ( ) No
   (b) Outer Continental Shelf Act Endorsement? (x) Yes ( ) No
   (c) Is Coverage "B" extended to cover the liability of the insured under the "Death On the High Seas Act" (x) Yes ( ) No
   (d) Is coverage afforded for Maintenance & Cure? (x) Yes ( ) No
   (e) Endorsement providing that a claim "in rem" shall be treated as a claim against the Contractor (x) Yes ( ) No

II. If Marine Coverage for employees is not provided herein, state policy (ies) where coverage is provided:

III. It is hereby certified that Workmen's Compensation policy is filed with the proper authorities in the State (s) of: Louisiana and Mississippi

B. Comprehensive General Public Liability

I. Does policy cover
(a) Surface damage for blowout or explosion? (x) Yes ( ) No
(b) Contractors' Protective - work let or sublet (x) Yes ( ) No
(c) Products - Completed Operations (x) Yes ( ) No
(d) Contractual Liability specifically insuring contract between Ocean Drilling & Exploration Company and insured (x) Yes ( ) No
(e) Is coverage provided for property of others in your "care custody and control" ( ) Yes (x) No
(f) Endorsement providing that a claim "in rem" shall be treated as a claim against the insured (x) Yes ( ) No

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II. Territory Covered Louisiana, Mississippi and Outer Continental Shelf

(a) Has policy been endorsed to cover operations in Gulf of Mexico (x) Yes ( ) No
(b) If answer to (a) is "yes", up to how many miles offshore Territorial limits adjacent to U. S. and Canada

C. Automobile Liability

I. Does this policy cover:
(a) All owned automobiles (x) Yes ( ) No
(b) Non-owned automobiles (x) Yes ( ) No
(c) Hired automobiles (x) Yes ( ) No

D. Vessels

I. Does Hull insurance cover:
(a) Towing Vessels - American Institute Tug Form January, 1954 (Tug Syndicate Revision 11/30/59) or equivalent ( ) Yes ( ) No
(b) All other vessels - American Institute Time Hull Form December, 1959 ( ) Yes ( ) No

II. Does policy:
(a) Name Ocean Drilling & Exploration Company as an Assured on all Hull and P&I policies ( ) Yes ( ) No
(b) Delete clause limiting underwriter's liability with respect to an Assured other than an owner as respects to Ocean Drilling & Exploration Company ( ) Yes ( ) No
(c) Include crew members under the P&I insurance. ( ) Yes ( ) No

E. Has insurer waived subrogation against Ocean Drilling & Exploration Company in the above mentioned insurance policies, including all insurance carried by insured protecting against loss of or damage to its property and equipment employed in any of Ocean Drilling & Exploration Company's operations (x) Yes ( ) No

F. If Insured has contract with Ocean Drilling & Exploration Company containing "Hold Harmless" agreement, does policy cover such assumed liability? (x) Yes ( ) No

Date 10-9-70 Employers Insurance of Wausau
(Name of Insurance Company)

Signed By [signature] (Authorized Representative) (Name of Agent)

6112 Hamburg St., New Orleans, Louisiana
(Address of Agent)

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